

HIGH COURT OF ORISSA, CUTTACK

FIRST APPEAL No. 231 OF 2000

From the judgment and decree dated 29.04.2000 and 11.05.2000 respectively passed by Shri S.K.Paty, Civil Judge (Senior Division), Sambalpur in T.S. No. 82 of 1986.

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The Orissa State Textile Corporation
Ltd, Mahanadi Vihar, Cuttack & anr. Appellants

Versus.
Bhaskar Tea Company Ltd. & others. Respondents

For Appellants : M/s. D.H.Dhal, R.N.Mohapatra,
K.M.Dhal, advocates.

For Respondents: M/s.S.Udgata, P.K.Nayak, Y.S.P.Babu, M.Verma,
Y.Mohanty, S.N.Das, D.Pradhan, P.R.Sahoo,
P.S.Samantra, S.K.Misra, P.K.Behera,
S.B.Mohanty, advocates.

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PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of hearing : 13.10.2014 : Date of judgment: 28.11.2014

The unsuccessful defendant nos.1 and 2 in the court below have filed this appeal challenging the judgment and decree passed by the learned Civil Judge (Sr. Division), Sambalpur in T.S. No.82/1986 decreeing the suit of the respondent no.1 against these appellants declaring its right, title and interest over Schedule-A,B and C properties described in the plaint and directing these defendants to deliver possession of the same followed by a decree of permanent injunction restraining them from interfering upon 'A' schedule

property in entering with the possession of the respondent no.1 in respect of the same. It has also been directed that in the event of failure to give delivery of possession of schedule 'B' and 'C' properties, they would be liable to pay a sum of Rs.5,00,000/- to the respondent no.1 as compensation.

2. For the sake of convenience, clarity and to avoid confusion, the parties hereinafter have been referred to as they have been arrayed in the court below.

3. Plaintiff's case -

The plaintiff is a company incorporated under Indian Companies Act, 1956. It has set up an Engineering unit in the name and style of "Aditya Engineering Works" over 'A' schedule land. The purpose for the same is to undertake repair of the textile machineries and for manufacturing parts of the machines.

(a) The land described in the schedule A-1 which is a part of schedule A land was purchased by the plaintiff. The extent of purchased land is Ac.7.80 dec. The Company, named, Bhaskar Textile Mills Ltd. by registered sale deed dated 14.06.1976 had sold the said property to the plaintiff for a consideration of `48,000/- The plaintiff next purchased Ac.3.73 dec. which was in a compact area bounded by wall, having building, water tank with pipe fittings etc. from one "Aryavarta Industries Pvt. Ltd." by a registered sale deed

dated 08.07.1976 for consideration of `1,40,000/- The plaintiff claims that after purchase, three sheds were constructed over schedule A-2 land wherein machineries were installed by the plaintiff as detailed in schedule 'B' of the plaint.

(b) The plaintiff accordingly possessed the entire 'A' schedule and did the job works of manufacturing spare parts. In view of the diminishing trend of the demand for repair work requiring production of spare parts, the plaintiff found it no more possible to continue with the production since 1983, and, therefore, kept the buildings, machineries, furniture etc. under the lock and key, with the movables as stated in the schedule 'C' the plaint and the records of the plaintiff-company lying inside the premises.

(c) Bhaskar Textile Mills Ltd. is a company having its distinct identity incorporated under the Indian Companies Act had its factory adjoining the plaintiff's unit.

(d) By virtue of the Bhaskar Textile Mills (Acquisition and Transfer) Ordinance, 1985 (in short called 'the Ordinance'), the said textile undertaking and the right, title and interest of the owner in relation to the said textile undertaking stood transferred to and vested absolutely in the State Government, the defendant no.3 with effect from the date the Ordinance came into force and the textile undertaking stood transferred to and vested in the Orissa State

Textile Corporation Ltd., the defendant no.1. The undertaking included all assets, rights, lease holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balance, cash in hand, reserve funds, investments and all other rights and interest in, or arising out of, such property, as were immediately before the appointed day in the ownership, possession, power or control of the owner of the textile undertaking, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and those were also by operation of law got freed, discharged from any trust, obligation, mortgage, hypothecation, charge, lien and all other encumbrances affecting it and any attachment, injunction or decree or order of any court restricting the use of such property in any manner also stood withdraw.

(e) When the factory of Aditya Engineering Works was under lock and key and its premises was under watch and ward, the defendant nos.1 and 2 illegally locked and took possession of the said unit by misrepresenting the watchman of the said unit that by such Ordinance the possession was being taken and henceforth they would run the factory. So the watchman in good faith believed their words and did not offer any resistance with hope of employment and other future benefits thereof.

(f) After coming to know about of such illegal act on the part of the defendant nos.1 and 2, the plaintiff did their best to convince the officials of defendant no.1 to unlock the unit. The attempt went in vain. So, notice through its Solicitor requesting the defendant no.1 for removal of such lock was served on 06.01.1988. Surprisingly, the reply came stating the falsehood that the unit "Aditya Engineering Works" to be within the boundary of the factory of Bhaskar Textile Mills and their act was asserted to be perfectly legal. The plaintiff again sent a reply on 11.04.1986 that this "Aditya Engineering Works" adjoins the factory of Bhaskar Textiles Mills Ltd. So there should not be any claim of right over it by virtue of operation of the said provision of the said Ordinance. In other words, it was sought to be explained that the immovable property etc. of "Aditya Engineering Works Ltd." are in no any way affected by virtue of coming into force of that Ordinance. It was sought to be explained that for the convenience as "Aditya Engineering Works" was basically manufacturing the spare parts of the textile machineries and doing repairing work of the machineries for convenience sake there was a gate in between for entry and exit from the premises of one unit to the other and that was being used for carrying machineries, parts etc as and when necessary for the purpose.

In view of the above, the plaintiff filed the suit with the prayers as indicated above. The plaintiff had also prayed for

appointment of a receiver and initially a Pleader Commissioner was appointed to conduct inventory of the factory premises over schedule 'A' land. It was then ascertained that defendant no.3 had locked the main gate of the factory. So there was a direction to defendant no.3 to allow the pleader commissioner to make an entry for the purpose of inventory. It was not obeyed. Therefore, defendant no.3 was later on impleaded as a party to the suit and its employee in-charge as defendant no.4. It is stated that defendant no.3 published a tender notice in an Oriya daily newspaper on 07.05.1989 for sale of machineries which include with the machineries described in schedule 'B'. It was found that the same were sold pursuant to the said tender notice. Therefore, it is said that the officials of the defendant nos.1 and 3 have connived in selling those for their illegal gain and thus all the defendants are jointly and severely liable to compensate the plaintiff for the value of machineries as per schedules 'B' and 'C' of the plaint.

4. Defendant nos.1 and 2 contested the suit by filing joint written statement whereas others remained ex parte, which is also the position in the present appeal before this Court that the respondent no.3 is going unrepresented and none is appearing on his behalf.

5. Defendants' case -

(a) Advancing the plea as regards the maintainability of the suit; lack of cause of action to bring the suit; the suit being barred for nonjoinder of necessary party and being bad by limitation, the defendants further stated that the plaintiff is a subsidiary company of "Bhaskar Textile Mills Ltd." and as such it is not a separate entity and do not have any distinct identity. The textile machineries repairing and manufacturing unit is a part of "Bhaskar Textile Mills Ltd." by whatsoever name it may be called. "Aditya Engineering Works" is thus said to be a part and parcel of "Bhaskar Textile Mills". Thus, the "Aditya Engineering Works Ltd." over schedule 'A' land is situated.

(b) The sale deeds for sale of A/1 and A/2 lands executed by "Bhaskar Textile Mills Ltd." and "Aryavarta Industries" respectively in favour of the plaintiff are described as nothing but paper transactions having not worth of even the paper written on. So, those transactions did not convey any title in respect of the immovable properties etc. in favour of the plaintiff. It is further stated that the sale deeds are not properly executed and registered.

(c) Schedule 'A' land of the plaint was acquired by the Government from "Bhaskar Textile Mills Ltd." by virtue of the Ordinance for specific purpose and there was no authority of Bhaskar Textile Mills Ltd. to alienate any portion of the same and accordingly such sales are said to be invalid in the eye of law to have conferred no

right, title and interest over those properties upon the so called vendees.

(d) It is stated that no sheds or machineries of the plaintiff's remain over schedule 'A' land and those were never constructed or installed by the plaintiff. The defendants to save and avoid different taxes have created various benami units and the present company belongs to the family of "Bhaskar Textile Mills Ltd." though given different name for benami purpose to avoid payment of tax. It is further disclosed that prior to the stoppage, the Bhaskar Textile Mills Ltd. and Aditya Engineering Works had already stopped.

With such pleadings the defendant prayed to nonsuit the plaintiff.

6. The trial court on such rival pleadings framed the following issues.

- I. Is the suit as laid maintainable in the eye of law?
- II. Has the plaintiff any cause of action to bring the suit?
- III. Is the suit bad for non-joinder of necessary party?
- IV. Is the suit barred by law of limitation?
- V. Is the plaintiff entitled for declaration of its right, title and interest over the suit properties described A ,B and C of the plaint?
- VI. Is the plaintiff entitled for a decree of recovery of possession as prayed for?

- VII. Is the plaintiff entitled for a decree of compensation of Rs.5,00,000/- from the defendants?
- VIII. Is the plaintiff entitled for a decree of permanent injunction as prayed for?
- IX. To what other relief, if any, the plaintiff is entitled.

In the trial the plaintiff examined six witnesses when the defendants examined one. The plaintiffs have proved a number of documents and discussion of those will be made as and when necessary. The trial court as it appears has rightly taken up issue no.(V) for decision first, as practically the fate of the suit hinges upon its answer and by that answer to the said issue, the factual controversies raised in the suit as also the legal position advanced in the court below and here before this Court would get automatically addressed. Furthermore, it is seen that answer to other issues, will follow as sequel to the answer to this issue no.(V).

Therefore, this Court feel it proper to examine the sustainability of the said finding of the trial court on issue no.(V) both in fact and law.

- 8. Learned counsel for the appellant submitted that -
 - (i) the finding of the trial court that there was no specific pleading in the written statement by these defendants challenging Exts. C/1 and C/2 is unsustainable in the eye of law in view of the

specific stand taken in their written statement that those are invalid, and, therefore, registration and execution are improper.

In this connection, provision of Order-6, Rule-2, C.P.C. is placed in submitting that the said provision mandates against the specific pleading to be advanced in respect of any provision of law when the trial court has completely misread in stating that provision of law needs to be specifically pleaded. It is submitted that facts are needed to be specifically pleaded and not the provision of law. So when the appellant is challenging Exts.C/1 and C/2 as invalid for noncompliance of the mandatory provisions of Companies Act, which is purely a question of law to be decided on application of the relevant provision of Companies the Act to the facts of the case, it was not required to be so specifically pleaded with reference to the specific provision of the Act. It is contended that had those Exts.C/1 and C/2 been challenged on the ground of fraud and misrepresentation then it would have been the requirement to state the grounds by advancing specific pleading which is not the case here. He has placed reliance on the decision of the Apex Court reported in “**Kedar Lal Seal and another Vrs. Hari Lal Seal**”, A.I.R. 1952 S.C. 47, “**Ram Sarup Gupta (dead) by L.Rs. Vrs. Bishun Narain Inter College and others**”; A.I.R. 1987 S.C. 1242, “**Maharashtra State Electricity Board Vrs. M/s. Madhusudandass and Brothers Tumsar**”, A.I.R. 1966 Bombay 160 while further placing AIR commentaries on Order

6, Rule 2 CPC in Code of Civil Procedure by Manohar & Chitaley (Vol.III) published by A.I.R.

(ii) It is submitted that the finding of the trial court that the provision of Sections 291 and 292 of the Companies Act have been complied with in respect of the two sale transactions under Exts.C/1 and C/2 is wholly contrary to the law as also thus factual position of the case. It is submitted that the provision of law and the admitted facts have not at all been properly addressed and rather misread.

(iii) It is next submitted that the view taken by the trial court that when by resolution dated 24.09.1979 the two sale deeds, i.e., Exts.C/1 and C/2 have been rectified and this the provision of Sections 291 and 292 of the Companies Act have been duly complied with, is again an error of law and that according to the learned counsel for the appellant is contrary to the mandate of the provision of Sections 291 and 292 as well as Sections 297 of the Companies Act. Therefore, he submits that this is a fit case where the Court should pierce the corporate veil and find that the person operating behind these companies were working in close connivance with each other and the companies were operating on pen and paper which should not be allowed to surpass or bypass the law. He has referred to the position of law decided in case of “**State of U.P. vrs. Renusagar Power Co.**”; AIR 1988 SC 1737.

9. Learned counsel for the respondent no.1 in response to the above submissions argued that the finding of the trial court is based on due appreciation of evidence in the touch stone of the respective pleadings of the parties. Then he goes to reiterate the reasons which found favour with the trial court in ultimately rendering the finding. He also contended that the finding of the trial court on issue no. (V) is wholly defensible on the ground that the plaintiff is a separate entity though "Aditya Engineering Works" was an unit of the plaintiff. The sale transactions, according to him, are not liable to be set at naught since there has been due compliance of required provision of the Companies Act. He also contended that the pleading to the effect being absent the trial court has rightly taken a view that those are not to be gone into and still it has been dealt. On the whole, he contended with vehemence that the finding on issue no.(V) being unassailable, the judgment and decree passed by the court below are not liable to be interfered with.

10. First coming to the question of challenge to the two sale deeds marked as Exts.C/1 and C/2 dealt under issue no.(V), it is seen that the court below has said that there was no specific and clear pleading in that regard by the defendant nos.1 and 2 in their written statement in so many words challenging the Exts.C/1 and C/2. At this stage when paragraph-6 of the written statement is gone through, it is found that the defendant nos.1 and 2 have taken a

clear stand that these Exts.C/1 and C/2 are invalid and their execution and registration are improper. In this connection, let us have a short survey of the provision under Order-6, Rule-2 C.P.C. It states that that the material facts are required to be specifically pleaded and not the provisions of law. In case of Kedar Lal (supra) the Hon'ble Apex Court have held that the court would be slow to throw out a claim on a mere technicality of pleading when subsence of the thing is there. It is for the judge to apply law to the facts of the case. Again in case of Ram Swarup (supra), the object and purpose of Order 6, Rule 1 CPC have been discussed. It has been held that the object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair splitting technicalities. The form is not to be emphasized whereas the substance of pleading should be considered.

In case of MES Board (supra) it has been held that law need not be pleaded and it is the duty of the court to apply law to the facts proved and found.

In view of above settled position as regards pleading in accordance with the provision of Order 6, Rule 1 CPC, when the para-

6 of the written statement is seen, it is clear that if the appellants would have challenged Exts.C/1 and C/2 on the ground of fraud and misrepresentation then it would have been the requirement of law to state specifically the grounds. But here the appellants have challenged the sale deeds Exts.C/1 and C/2 to be invalid for noncompliance of the provision of the Company Act which is a pure question of law even having no link with any factual aspect. Thus this view of the trial court is not correct.

11. Now, coming to the specific aspect of compliance of the provisions of Section 291 and 292 of the Companies Act, 1986, the trial court while examining the resolutions Ext.C-4 and C-5 has unambiguously found that in Ext.C-5 it finds mention that Aditya Engineering Works is set up by the plaintiff and thereby all action by them taken in the connection for which resolution was passed and all expenses incurred thereunder have been ratified, approved and confirmed. So it has been concluded that the purchases by plaintiff under Ext.C-1 and Ext.C-2 have been ratified in the meeting held on 24.09.1979. From that finding has been rendered that the provision of Section 291 and 292 of the Act stood complied with.

12. Section 291 of the Act provided the general powers of the Board of Directors with exceptions as provided under the two provisos. Section 292 enumerates the power of the Board of Directors in specific which includes the power to invest the funds of the

Company by means of resolutions passed at meetings of the Board. Section 297(1) of the Act reads that except with the consent of the Board of Directors of a Company, a Director of the Company or his relative, a firm in which such a Director or relative is a partner, any other partner in such a firm or a private Company of which the Director is a member or Director shall not enter into any contract with the Company for those stipulated in Clause (a) and (b) with further restriction as per the proviso Sub section (3) though further restricts the application of sub section (1) and (2) further provides that in those cases consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.

13. So as per the provision of Section 291 of the Act, the requirement is that before the company enters into a commercial transaction with a related party it has to be ratified by a resolution by the Board of Directors under Section 297 of the Act. The requirement of Section 291 is to be complied with resolution that has to be a pre-facto act and not a post facto. In the present case, these Ext. C/1 and C/2 have been executed in the year 1976 whereas the resolution has been passed in the year 1979, i.e. long after the execution of the sale deeds. Power under the provisions of the Act no doubt remains with the Directors to validate previous act by post facto resolution and that is only restricted to a particular period. But the same does not

remain as regards related party transaction and this is only to ensure transparency as is evident. As regards this necessity it is necessary to look at the evidence of P.W.1 the Managing Director of the plaintiff. He has stated that Surajmal Mohata was the M.D. of "Bhaskar Textile Mills Ltd." who executed the sale deed Ext.C/1. He has further stated that he himself and the said Surajmal as the Managing Director of Aryavarta Industries have executed sale deed Ext.C/2. Next from both the documents, i.e., Exts.C/1 and C/2 the addresses of registered offices of the vendor and vendee companies is found to be same. Thus, the above discussion of provision of law being considered with the evidence of P.W.1, clearly indicate that these sale deeds are nothing but related party transactions which mandatorily necessitated the compliance of the provisions of Section 291 of the Companies Act which is lacking in this case.

For the aforesaid, the finding of the trial court as regards compliance of provisions of Section 291 and 292 of the Act is found to be a flawed one and as such unsustainable. In that view of the matter, the foundation of the claim of plaintiff loses its ground and thus fails.

14. In the result the appeal stands allowed with cost throughout.

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D. Dash, J.

Orissa High Court, Cuttack
The 28th November, 2014/Himansu